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ALEXANDRIA, VA 22311
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Paper No. 60

OPPENHEIMER WOLFF & DONNELLY,
LLP (ACCENTURE)
PLAZA VII, SUITE 3300
45 SOUTH SEVENTH STREET
MINNEAPOLIS, MN 55402-1609

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JUL 07 2005

OFFICE OF PETITIONS

In re Application of :
Handel et al. : DECISION ON
Application No. 09/195,852 : PETITION
Filed: November 19, 1998 :
Attorney Docket No. AC980009 :
:

This is in response to the "Petition to Revive under 37 CFR 1.137(a)" filed December 3, 2004 (and resubmitted June 6, 2005). Under the circumstances of this case, this petition is properly treated as a request to withdraw the holding of abandonment under 37 CFR 1.181. The instant petition was recently forwarded to the undersigned for consideration.

The petition under § 1.181 is granted.

The above-identified application became abandoned for failure to timely pay the required issue fee within the statutory period of three (3) months from the mailing date, June 21, 2004, of the Notice of Allowance and Fee(s) Due. (There was no concurrent but distinct requirement for new drawings or payment of the publication fee). No extensions of time are permitted for transmitting issue fees. No reply considered received, the above-identified application became abandoned on September 22, 2004. A Notice of Abandonment was mailed on November 8, 2004.

In response, applicant promptly filed the instant petition. Therein, applicant asserts that the issue fee was timely paid by facsimile on August 20, 2004.

However, consideration of petitioner's evidence is unnecessary. A review of Office records makes clear that the issue fee transmittal was timely received in the Office on August 20, 2004 and misplaced in the Office. The transmittal with a date of receipt in the Office of August 20, 2004 has now been made of record in the instant application. (It is further noted that an amendment after allowance filed July 7, 2004 was also misplaced. It too has been made of record in the instant application).


The issue fee has now been charged to petitioner's Deposit Account.

In view thereof, the issue fee payment is considered timely filed, and the holding of abandoned is hereby WITHDRAWN.

Since consideration of the petition under § 1.137(a) is unnecessary for the reasons cited, the petition fees¹ will be refunded to Deposit Account No. 50-1901, as authorized.

This file is being forwarded to Technology Center AU 2177 for consideration by the examiner of the amendment after allowance filed July 7, 2004.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3219.


Nancy Johnson
Senior Petitions Attorney
Office of Petitions

¹ The fee was charged twice, on the initial and resubmission of the petition. Both fees, totaling \$610, are being refunded.